

REMARKS

This Amendment is responsive to the final Office Action of September 3, 2008.

By this Amendment, claims 24-38 are cancelled, without prejudice or disclaimer, claims 1, 18, 39, and 62 are amended, and claim 111 is added. Consequently, claims 1, 3, 6, 9, 10, 12, 13, 16, 18-23, 39, 41, 44-48, 50, 52, 54, 56-62, 64, 65, 68, 69, 71, 72, 76, 78-83, and 111 are pending in this application¹, with claims 1, 39, and 62 being independent.

As an initial matter, Applicants wish to express sincere appreciation to the Examiner for the courtesy extended to Applicants' representative during the personal interview held on December 10, 2008. At the interview, the 35 U.S.C. § 103 rejection outstanding in the September 3, 2008 Office Action was discussed. The following remarks reflect the subject matter discussed during the interview.

In the final Office Action, the Examiner rejected claims 1, 3, 6, 9, 10, 12, 13, 16, 18-23, 39, 41, 44-48, 50, 52, 54, 56-62, 64, 65, 68, 69, 71, 72, 76, and 78-83 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Japanese Application Publication No. 2002-136332 ("Yuzuhara") in view of Japanese Patent Publication No. 2001-158464 ("Furusawa").

Yuzuhara discloses a pouring vessel 4 with a brush 10 for applying liquid hair product (hair dyeing agent, hairdressing agent, hair restoration agent, etc.). A handle part 8 is attached to vessel 4, and brush 10 is attached to handle part 8. As best shown in Figs. 3 and 6, brush 10 includes brush teeth 102 each having a pouring passage 114 and a pouring port 116 communicating with the tip of the pouring passage 114.

¹ The final Office Action incorrectly lists claim 2, rather than claim 3, in the listings of pending and rejected claims. See Office Action Summary at item 4) and 6) and Detailed Action at 2. Applicants respectfully request the Examiner to correct this error in a next Office communication to Applicants.

Yuzuhara expressly teaches that the direction of the opening of pouring port 116 differs between adjacent brush teeth 102b and 102c so that hair product can be uniformly and widely applied to hair. See, e.g., Fig. 4, Abstract, and paragraph [015].

While admitting that Yuzuhara lacks disclosure of certain claimed features, the Examiner alleged that the secondary reference Furusawa discloses all of the missing elements of Yuzuhara and that it would have been obvious to modify the Yuzuhara device to incorporate the missing elements purportedly taught by Furusawa. Office Action at 3-4.

For at least the following reasons, Applicants respectfully disagree and submit that all of the pending claims patentably distinguish from the asserted combination of Yuzuhara and Furusawa.

Independent Claim 1 and Its Dependent Claims

Although Applicants do not necessarily agree with the Examiner's apparent characterizations regarding the claims and the teachings of the cited references, Applicants have amended independent claim 1 to recite an applicator nozzle including, among other features, "an arrangement of at least three teeth [is] disposed so as to form a single row ... wherein the nozzle does not have any row of teeth other than the single row of teeth formed by the arrangement of at least three teeth." As detailed below, the asserted combination of Yuzuhara and Furusawa cannot provide any basis for a *prima facie* case of obviousness under 35 U.S.C. § 103(a) with respect to amended independent claim 1 and its dependent claims.

For example, brush 10 of Yuzuhara includes brush teeth 102 standing close together in all directions (i.e., lengthwise and crosswise), forming multiple rows of teeth 102a, 102b, and 102c. See, e.g., Figs. 1, 2, and 4, Abstract, and paragraph [006]

entitled "Means for Solving the Problem" of the attached translation. Having multiple rows of teeth 102a, 102b, and 102c in Yuzuhara's brush 10 is an essential feature upon which Yuzuhara was designed to operate since Yuzuhara emphasizes having multiple rows of teeth 102 as a means for enabling wide and uniform application of hair product. Id. Thus, modifying the device of Yuzuhara to have only a single row of teeth would necessarily destroy the essential teachings of Yuzuhara or, at a minimum, materially change the basic principle under which the Yuzuhara device was designed to operate.

It is well-settled that, when a proposed modification or combination of the prior art would change the principle of operation of the prior art, the teachings of the references are not sufficient to render the claims *prima facie* obvious. In re Ratti, 270 F.2d 810, 123 USPQ 349 (CCPA1959). In this case, as detailed above, modifying the teachings of Yuzuhara to have only a single row of teeth would not only materially change the basic operational principle of the Yuzuhara device, but also destroy the essential teachings of Yuzuhara. Therefore, regardless of the purported teachings of Furusawa or any other secondary reference for that matter, one of ordinary skill in the art would not have modified the teachings of Yuzuhara to arrive at the claimed subject matter.

For at least these reasons, independent claim 1 and its dependent claims patentably distinguish from the alleged combination of Yuzuhara and Furusawa.

Independent Claims 39 and 62 and Their Dependent Claims

During the interview, the Examiner indicated that amending the term "adjacent" to --positioned directly next-- in each of independent claims 39 and 62 would obviate the Section 103(a) rejection based on the asserted combination of Yuzuhara and Furusawa. Applicants appreciate the Examiner's suggestion. Without necessarily agreeing with the Examiner's characterization of the claims, Applicants have amended each of claims 39

and 62, as suggested by the Examiner, in order to further the prosecution of this application.

Furthermore, Applicants have also amended each of independent claims 39 and 62 to include a recitation similar to language being added to independent claim 1. Specifically, claims 39 and 62 are amended to recite that “an arrangement of at least four teeth [is] disposed in a single row ... wherein the nozzle does not have any row of teeth other than the single row of teeth formed by the arrangement of at least four teeth.” For reasons similar to those set forth above in the discussion of independent claim 1, the asserted combination of Yuzuhara and Furusawa cannot establish a *prima facie* case of obviousness under 35 U.S.C. § 103(a).

For at least these reasons, independent claims 39 and 62, and their respective dependent claims, patentably distinguish from the alleged combination of Yuzuhara and Furusawa.

For the reasons set forth above, independent claims 1, 39, and 62 and each of the claims depending therefrom should be allowable.

Applicants respectfully request reconsideration of this application, withdrawal of the 35 U.S.C. § 103(a) rejection, and allowance of all pending claims.

The final Office Action contains a number of statements and characterizations regarding the claims and the related art. Applicants decline to necessarily subscribe to any statement or characterization in the Office Action, regardless of whether it is addressed above.

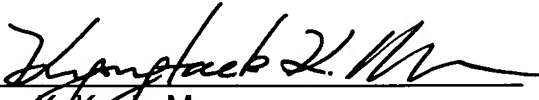
The Examiner is invited to call the undersigned (571-203-2739) if a telephone conversation might advance prosecution of the application.

Please grant any additional extensions of time required to enter this Amendment
and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: January 23, 2009

By: 
K Kevin Mun
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Attachments:

- 1) English translation of Abstract and Detailed Description of Japanese Application Publication No. 2002-136332 (translation being a computer-based translation obtained from the Japanese Patent Office website); and
- 2) English translation of Abstract and Detailed Description of Japanese Application Publication No. 2001-158464 (translation being a computer-based translation obtained from the Japanese Patent Office website).